

# The rise and fall of the Rwanda Act

Despite the Safety of Rwanda (Asylum and Immigration) Act (SORA) no longer being in place, it remains an important case study, as it demonstrates the potential for elective dictatorship and the weakness of the Supreme Court in the UK

In April 2024, SORA became law, allowing the government to send asylum-seekers to Rwanda, despite significant opposition among both MPs and peers, including many leading Conservatives. However, after winning the UK general election in July, the Labour government informed the Rwandan government that it would end the Migration and Economic Development Partnership, effectively reversing the Conservative government's scheme.

Immigration lawyer Toufique Hossain and his team outside the Supreme Court in November 2023, following their success at arguing that the Conservative government's Rwanda policy was unlawful because of risks to asylum-seekers

### Box 1 The Supreme Court and Parliament

#### Judicial review

In November 2023 the Supreme Court, in the case *R (AAA and others) v Secretary of State for the Home Department*, declared that the government's policy to send asylum-seekers to Rwanda was unlawful. Together with the Rwanda Treaty, SORA was the government's response.

#### Parliamentary sovereignty

SORA reaffirmed Parliament's power to legislate, bypassing the Court's 2023 judgement, by stating that Parliament 'deemed' Rwanda to be a safe country, regardless of evidence. This was unprecedented: former Conservative chancellor, Lord Clarke, said that Parliament's sovereignty had never been used to permanently establish a fact as law, contrary to a court judgement.

#### Separation of powers

Critics argued that SORA undermined this principle because Parliament took over the role of the judiciary by interpreting and applying legal rules to facts. However, former Conservative leader, Lord Howard, argued:

'...if there is any breach of the principle of separation of powers...it is not the government that is guilty, it is the Supreme Court... In resolving to decide this issue for itself, the Supreme Court was trespassing on the province of the executive.'

### Box 2 Rule of law

Former Lords' Speaker, Baroness D'Souza, argued that SORA:

'...subverts the rule of law, the key elements of which are abiding by international law, equality before the law, respect for fundamental human rights and guaranteeing access to the courts.'

However, many Conservative politicians argued that MPs, who are accountable to the people, have the right to legislate on issues as they see fit. Lord Howard argued:

'Accountability is at the heart of democracy... the government is fully entitled to bring forward this bill.'

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### Box 4 The House of Lords

Prime Minister Rishi Sunak's warning that peers should not frustrate the 'will of the people' was ignored. The Archbishop of Canterbury, one of 26 bishops in the Lords, argued that SORA undermined the ability of international rules to 'stop governments going ahead with things that are wrong'. However, peers lacked the power to force ministers into accepting their amendments, including an exemption for Afghanistan interpreters who helped British forces. After five rounds of 'ping-pong' between the chambers, crossbench peer Lord Anderson – whose amendment was the last standing – backed down, saying: 'The time has come to accept the primacy of the elected house and withdraw from the fray.' Green Party peer, Baroness Jones, argued that SORA questioned the Lords' status as a revising chamber.

### Box 5 Factionalism

SORA divided the Conservative party in both chambers more than any other issue in recent years. It led to divisions in Sunak's cabinet over a possible withdrawal from the European Convention on Human Rights. Four members of cabinet – including Kemi Badenoch – supported withdrawing, whereas 12 cabinet ministers – including those in the One Nation group – opposed it. In December 2023, MP Robert Jenrick resigned from the government as minister for immigration over SORA not going far enough.

The 39 Conservative MPs who opposed SORA chose to not vote rather than vote against it, meaning that it passed after the final Lords' amendment was defeated 312–237. Every Labour, SNP and Liberal Democrat MP opposed SORA.

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